IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 4971 of 2004(P)

PETITIONERS:
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1. V.T.SUSHEELA AMMA,
W/O. CHEMMATTU KUMARAN NAIR, RESIDING AT NADUVA AMSOM DESOM, TIRURANGADI TALUK, P.O.CHETTIPADI.

2. CHEMMATTU KUMARAN NAIR,
S/O. KAMAKSHI AMMA, RESIDING IN -DO- -DO-.

3. MANOJ, S/O. KUMARAN NAIR IN -DO- -DO-.

4. PRAMOD, S/O. -DO- IN -DO- -DO-.

BY SR. ADV. SRI.S.V.BALAKRISHNA IYER
SRI.HARISH R.MENON

RESPONDENT:

OPPAM THARAMMAL VELAYUDHAN,
SON OF CHOYIKUTTY, RESIDING AT NEDUVA AMSOM AND DESOM, TIRURANGADI TALUK, P.O. CHETTIPADI.

BY ADV. SRI.T.KRISHNAN UNNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 4971/04)

PETITIONERS' EXTS.:

EXT.P1: TRUE COPY OF THE REPORT SUBMITTED BY ADVOCATE COMMISSIONER IN O.S.NO.67 OF 2002 OF THE MUNSIFF'S COURT, PARAPPANANGADI.

EXT.P1(a): TRUE COPY OF THE PLAN SUBMITTED BY THE ADVOCATE COMMISSIONER IN O.S.NO.67 OF 2002 OF THE MUNSIFF'S COURT, PARAPPANANGADI.

EXT.P2: TRUE COPY OF THE AFFIDAVIT IN I.A.NO.1434 OF 2003 IN O.S.NO.67 OF 2002 OF THE MUNSIFF'S COURT, PARAPPANANGADI.

EXT.P3: TRUE COPY OF THE ORDER OF THE MUNSIFF'S COURT, PARAPPANANGADI IN I.A.NO.1434/03 IN O.S.NO.67 OF 2002.

EXT.P4: AFFIDAVIT BY ADVOCATE FOR DEFENDANTS IN THE SUIT O.S.NO.67 OF 2002 OF THE MUNSIFF'S COURT, PARAPPANANGADI.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.4971 of 2004

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Dated: 7th August, 2007

JUDGMENT

Heard Mr.Harish R.Menon, learned counsel for the petitioners and Mr.T.Krishnanunni, learned counsel for the respondent.

2. In this Writ Petition the petitioners-defendants impugn Ext.P3 order by which the learned Munsiff dismissed an application filed by them for remitting the Commissioner's report so that the plaint schedule property could be identified on the basis of the title documents of the parties and the pleadings. Even though Mr.Harish R.Menon, learned counsel for the petitioners would flay Ext.P3 on the various grounds raised in the Writ Petition and did invite my attention to the documents placed on record and the plaint as well as the documents of title, I am not inclined to examine the merits of the grounds raised in the Writ Petition. I find that an affidavit has been filed along with the Writ Petition by Advocate T.Ramankutty Menon, who was appearing for the petitioners before the court below. It is stated therein that the impugned order was not preceded by a hearing. The said affidavit is fairly convincing . I accept the affidavit and set aside the impugned order and direct the learned Munsiff to pass fresh orders on the application filed by the petitioners after

hearing the petitioners as well as the respondents. Fresh orders as directed above will be passed at the earliest and at any rate within one month of receiving copy of this judgment.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**